	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/552,230	FRICKE ET AL.
	Examiner	Art Unit	
	BLAKE RUBIN	2457	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

        Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: _13 and 17-20_.

    Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☒ Other: See Continuation Sheet.

/ARIO ETIENNE/
Supervisory Patent Examiner, Art Unit 2457

Continuation of 13. Other:

1.   With respect to claim 13, applicant argues that Airy in view of Payne does not disclose, "estimating, by the server, a corresponding future data transfer size of the data actually stored in the first device, said estimating being based on a historic data transfer size for data previously transferred from the firtst device to the server over the network.

          The examiner respectfully disagrees. In addition to Airy's disclosure in paragraph [0010], lines 20-22, that "the base queue size estimate influences future schedules", Airy goes on to specifically disclose that the future estimates are based on historical transmissions. In the case Airy's the future estimates are based on current transmissions, which in turn become historical data at the point in time in which the transfers are to occur. In paragraph [0069], lines 4-7, Airy states, "the base transceiver station must estimate how many data blocks to include within subsequent schedules", whereby the subsequent schedules then based on historical transfer sizes, just as the applicant's claim requires, "said estimate being based on a historic data transfer size".

2.   Furthermore, with respect to claim 13, applicant argues that Airy does not disclose, "determining, by the server, that a difference exists between the actual data transfer size and the corresponding estimated future data transfer size."

          The examiner respectfully disagrees. As previously cited in non-final office action mailed, April 18, 2008, Airy discloses a discrepancy between actual and estimated data transfer sized in paragraph [0053] as updating the User Queue Size Estimated upon receiving the RTS, as the applicant explained previously in arguments.

3.   Furthermore, with respect to claim 13, applicant argues that Airy does not disclose, "responsive to said determining that said difference exists, changing an existing data transfer period for the first device in the schedule in a way that minimizes change to the schedule."

          The examiner respectfully disagrees. Similarly to applicant's argument above, Airy discloses, in paragraph [0053], lines 5-8 that the schedule "sets" the queue according to updated transfer size information received from the subscriber unit, which is a result of the difference between the actual and estimated data transfer sizes.

4.   Furthermore, with respect to claim 13, applicant argues that Airy in view of Payne does not disclose, "keeping track, by the server, of an off-line device of the plurality of devices that is off-line and informing the off-line device of the off-line device's schedule for transferring data from the off-line device to the server as soon as the off-line device becomes on-line."

          The examiner respectfully disagrees. The examiner interpretation of the claimed limitation stand in contrast with the applicant. The applicant argues that upon the off-line devices transition to coming on-line, the now on-line device initiates a transmission. While the examiner interprets the action which is to be taken upon the devices transition to coming on-line as a transmission from the server to the now on-line device, which Payne discloses in the previously cited action in column 11, lines 56-60.

5.   Furthermore, with respect to claim 13, applicant argues that Airy does not disclose, "receiving, by the server, information relating to GSM radio reception power over time by another device of the plurality of devices and estimating…times unsuitable for the another device to be connected to the server."

          The examiner respectfully disagrees. Airy disclose in paragraph [0104] lines 1-5, such unsuitable times from the server connection as limiting the amount of subscribers per time slot, which is taken into account by the scheduler.

6.   Furthermore, with respect to claim 13, applicant argues that Airy does not disclose, "said server forecasting a bandwidth of the network by monitoring current download activity from the data transfers between the network and said server."

          The examiner respectfully disagrees. Airy discloses in paragraph [0079], monitoring the current state of the network and concurrent transfers in an effort to forecast bandwidth availability through taking a weighted average of the number or RTS retries to forecast the future number of subscriber units attempting communication and setting an forecasted loading level.

7.   Furthermore, with respect to claim 13, applicant argues that Airy in view of Batson does not disclose, "revising the schedule to achieve data transfer from the plurality of devices to the server at 80% of the forecasted bandwidth."

          The examiner respectfully disagrees. Batson discloses in paragraph [0079], that the schedule is revises the scheduler to provide 80% of the future bandwidth as a result of a critical loading.

8.   Furthermore, with respect to claim 13, applicant argues that Airy in view of Anderson does not disclose, "changing, by the server, the schedule in response to detecting that a device of the plurality of devices has run out of memory."

          The examiner respectfully disagrees. Anderson discloses in column 4, lines 22-30, monitoring the current state of the devices memory in order to allocate the collection of data. Furthermore, column 13, lines 3-5, disclose the adaptation of a schedule based on the resources, including whether a device has any available memory remaining.

9.   Furthermore, with respect to claim 13, applicant argues that Airy in view of Chefalas does not disclose, "determining, by the server, when to upload new software from the server to the plurality of devices, taking into account a reduction in an effective communication bandwidth, said reduction resulting from the data transferred from the plurality of devices to the server."

          The examiner respectfully disagrees. Chefalas discloses in paragraph [0034], lines 32-40, the scheduling of the software upload can be altered as a result of bandwidth constrains. Airy discloses rescheduling data transmissions. It would have been obvious to one skilled the art at the time the invention was made to combine the   software upload of Chefalas with the scheduler of Airy in order to

efficiently upload software to users based on available network resources.